



# Report from the Department of Justice

December 5, 2013

**Vincent J. Matanoski, J.D.**

*Deputy Director, Torts Branch*

# Statistics

Reporting Period: 8/16/13 – 11/15/13

- I. Total Petitions Filed in the United States Court of Federal Claims this reporting period: 202
  - A. Minors: 31
  - B. Adults: 171

# Statistics

**Reporting Period: 8/16/13 – 11/15/13**

## **II. Total Petitions Adjudicated this reporting period: 139**

**A. Compensated: 75**

**i. Cases conceded by HHS: 1**

**1. Decision awarding damages: 0**

**2. Decision adopting Proffer: 1**

**3. Decision adopting Settlement: 0**

**ii. Cases not conceded by HHS: 74**

**1. Decision awarding damages: 0**

**2. Decision adopting Proffer: 4**

**3. Decision adopting Settlement: 70**

**B. Not Compensated/Dismissed: 64**

**i. Decision dismissing Non-OAP: 37**

**ii. Decision dismissing OAP: 27**

# Statistics

Reporting Period: 8/16/13 – 11/15/13

**III. Total Petitions Voluntarily Withdrawn this reporting period (no judgment will be issued): 3**

# Glossary of Terms

- **Petitions Adjudicated:** Final judgment has entered on the petition in the United States Court of Federal Claims.
- **Final Judgment:** Clerk of Court, United States Court of Federal Claims, enters judgment awarding or denying compensation.
- **Compensable:** Petitioner received an award of compensation, which can be achieved through a concession by HHS, settlement, or decision on the merits by the special master, United States Court of Federal Claims.
- **Conceded by HHS:** HHS concluded that a petition should be compensated based on review and analysis of the medical records.

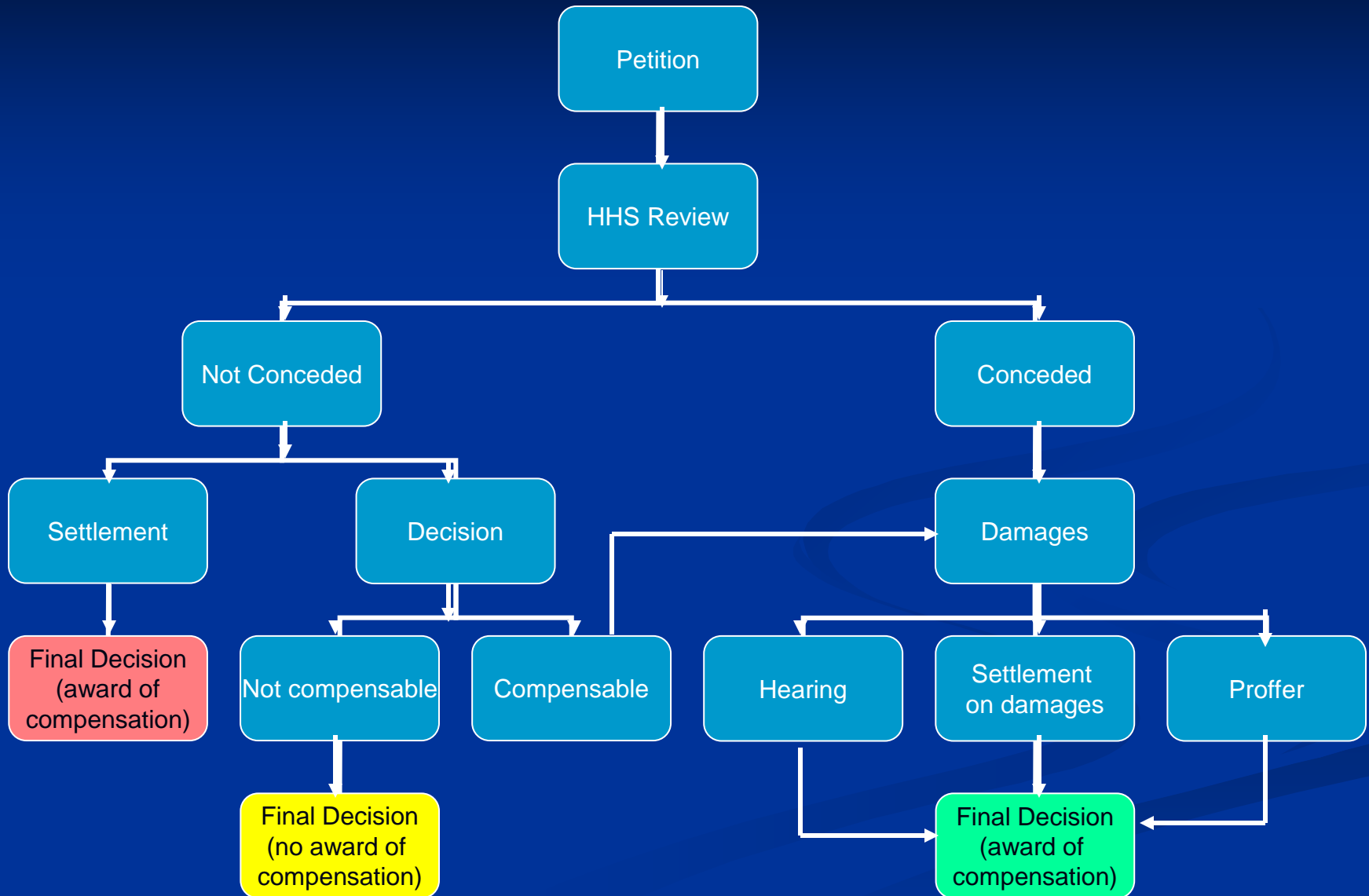
# Glossary of Terms

- **Settlement:** Petition is resolved via a negotiated settlement between the parties, and results in the filing of a stipulation that memorializes the terms of the settlement.
- **Decision:** Special Master issues decision on the merits of the petition.
- **Non-compensable/Dismissed:** Petition dismissed.
- **Proffer:** After discussions between the parties regarding a reasonable amount of damages, respondent will file a suggested award of compensation, known within the Program as a “Proffer,” which is also agreed to by petitioners and their counsel. The Proffer is reviewed by the presiding special master to determine that it represents a reasonable measure of the amount of the award and describes compensation pursuant to 42 U.S.C. § 300aa-15(a). The special master issues a final decision consistent with the terms of the Proffer.<sub>6</sub>

# Glossary of Terms

- **Affirmed:** Case has been reviewed on appeal, and the court on appeal agreed with the decision of the lower court.
- **Reversed:** Case has been reviewed on appeal, and the court on appeal disagreed with the decision of the lower court. The court on appeal typically provides reasons for reversing, and that decision becomes the law of the case, absent further appeal.
- **Remanded:** Case has been reviewed on appeal, and the reviewing court has a problem with the decision, and sends it back to the lower court. Typically, a case is remanded with a specific question or issue for the lower court to address.
- **Vacated:** Case has been reviewed on appeal, and the reviewing court has voided the lower court's decision.

# Petition Processing in the Office of Special Masters





# Levels of Appeal in Vaccine Act Cases

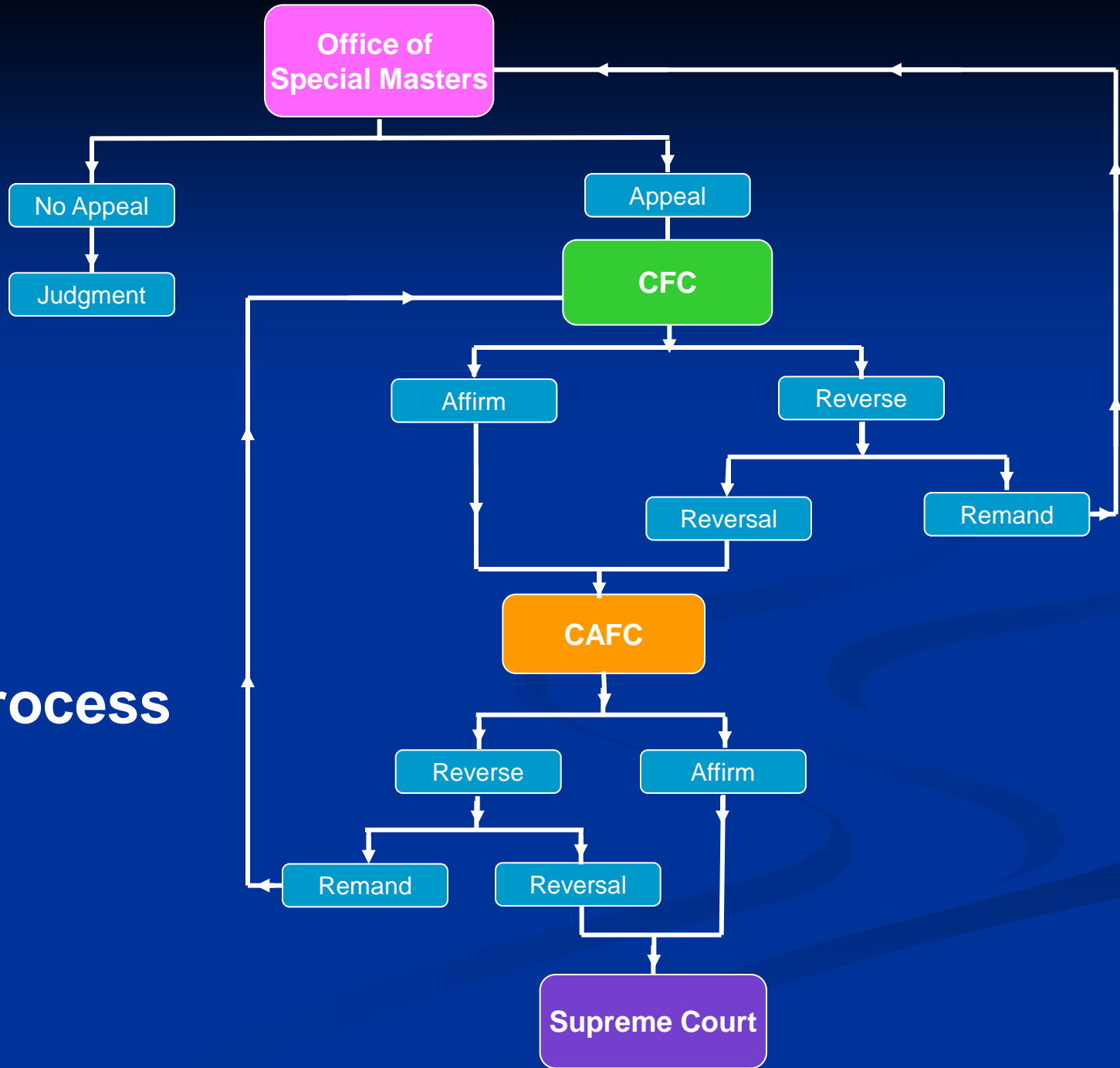
**U.S. Supreme Court**

**U.S. Court of Appeals for the  
Federal Circuit**

**U.S. Court of Federal Claims**

**Office of Special Masters**

# Appeals Process



# Appeals: U.S. Court of Appeals for the Federal Circuit

## Recently Decided Cases

### Appeals by Petitioner:

- *Isaac v. HHS*: Affirmed per curiam (Entitlement)
- *Carson v. HHS*: Affirmed (2-1) (Entitlement)
  - Petitioners filed a combined petition for panel rehearing and en banc rehearing

### Appeals by Respondent:

- *Tembenis v. HHS*: Reversed (Damages)

All decisions are available on the CAFC's website: <http://www.cafc.uscourts.gov>

# Appeals: U.S. Court of Appeals for the Federal Circuit

## Pending Cases

### Appeals by Petitioner:

- *LaLonde v. HHS* (Entitlement)

### Appeals by Respondent:

- *Dobrydnev v. HHS* (Entitlement)
- *Snyder v. HHS* (Entitlement)
- *Harris v. HHS* (Entitlement)

# Appeals: U.S. Court of Federal Claims

## Recently Decided Cases

### Appeals by Petitioner:

- *Paluck v. HHS*: Vacated (Entitlement)

*All decisions are available on the CFC's website: <http://www.uscfc.uscourts.gov>*

# Appeals: U.S. Court of Federal Claims

## Pending Cases

### Appeals by Petitioner:

- *Gerami v. HHS* (Entitlement)
- *Simanski v. HHS* (Entitlement)
- *Scanlon v. HHS* (Jurisdiction)
- *Flores v. HHS* (Entitlement)
- *Dillon v. HHS* (Entitlement)
- *Tompkins v. HHS* (Entitlement)
- *Stillwell v. HHS* (Entitlement)
- *Dodd v. HHS* (Entitlement)
- *Koehn v. HHS* (Entitlement)
- *Bast v. HHS* (Entitlement)
- *Holmes v. HHS* (Entitlement)

\*Yellow cases are new this reporting period

# Scheduled Oral Arguments

## U.S. Court of Appeals for the Federal Circuit:

- *LaLonde v. HHS*: January 8, 2014

## U.S. Court of Federal Claims:

- *Dillon v. HHS*: December 11, 2013
- *Flores v. HHS*: February 26, 2014

# Adjudicated Settlements\*

Reporting Period: 8/16/13 – 11/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	neurological injury	2 years, 8 months
DTaP, IPV	encephalopathy	1 year, 4 months
DT	SIRVA	10 months
Tdap, Hep B, MMR	Guillain-Barré Syndrome, severe cognitive and psychological sequella	5 years, 2 months
Tdap	Guillain-Barré Syndrome	1 year, 9 months
Flu	peripheral neuropathy, painful myalgias, and vertigo	1 year, 1 month
Flu	Guillain-Barré Syndrome	2 years, 8 months
Td	Guillain-Barré Syndrome	2 years, 8 months



# Adjudicated Settlements\*

Reporting Period: 8/16/13 – 11/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	opsoclonus-myoclonus syndrome, cerebellar ataxia	2 years, 2 months
Flu	Guillain-Barré Syndrome	2 years
Tetanus	demyelinating injury	1 year, 4 months
Flu	Guillain-Barré Syndrome	1 year
Flu	Guillain-Barré Syndrome	11 months
Flu	corneal transplant failure	10 months
Flu	Guillain-Barré Syndrome	8 months
Meningococcal, DTaP	transverse myelitis	2 years, 1 month

\*Terms of settlement are memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 8/16/13 – 11/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Guillain-Barré Syndrome	2 years, 5 months
Flu	transverse myelitis	1 year, 3 months
Flu	Guillain-Barré Syndrome	10 months
Flu	Guillain-Barré Syndrome	1 year, 4 months
Flu	Guillain-Barré Syndrome	3 years
Tetanus	Guillain-Barré Syndrome	2 years, 4 months
HPV	hypersensitivity reaction, acute demyelinating encephalomyelitis, gastrointestinal and menstrual issues	1 year, 2 months
Hep B	symptomatic orthostatic hypotension	1 year, 1 month

\*Terms of settlement are memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 8/16/13 – 11/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
DTaP	recurrent cluster headaches	2 years, 9 months
Flu	Guillain-Barré Syndrome	1 year, 10 months
DTaP, Hib, MMR	juvenile dermatomyositis	1 year, 1 month
DTaP, IPV, Hep B, Hib, PCV, RV	encephalopathy, death	3 years, 8 months
HPV	relapsing/remitting Multiple Sclerosis	2 years, 3 months
Flu	encephalitis	2 years, 4 months
Flu	Guillain-Barré Syndrome	1 year, 7 months
Flu	Guillain-Barré Syndrome	1 year, 1 month

\*Terms of settlement are memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 8/16/13 – 11/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	shoulder injury	11 months
Flu	bilateral optic neuritis resulting in permanent legal blindness	11 months
MMR, PCV, Varicella	encephalopathy or acute disseminated encephalomyelitis	3 years, 6 months
DTaP, Flu	Guillain-Barré Syndrome and/or chronic inflammatory demyelinating polyneuropathy	1 year, 8 months
Varicella, Meningococcal, Tdap, Flu	leukoencephalopathy	1 year, 10 months
Flu	Guillain-Barré Syndrome	1 year, 2 months
Flu	chemically-induced multiple sclerosis and/or transverse myelitis	6 years, 7 months
Td	multiple debilitating symptoms, including aggravation of chronic fatigue syndrome and chronic pain and muscle weakness	2 years, 7 months

\*Terms of settlement are memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 8/16/13 – 11/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	Guillain-Barré Syndrome and/or chronic inflammatory demyelinating polyneuropathy, death	1 year, 7 months
DTaP, Hib	opsoclonus-myoclonus syndrome	1 year, 6 months
Flu, Tdap, Hep B	brachial neuritis	1 year, 3 months
Tdap, Hep B	injection-related shoulder injury and rheumatoid arthritis	1 year, 1 month
Flu	Guillain-Barré Syndrome	1 year
Tdap	upper and lower extremity numbness and tingling, joint pain, and weakness	1 year, 1 month
Meningococcal	vasculitis, skin disfigurement	10 months
Flu	fibromyalgia, myositis, myopathy, hyperCKemia, myalgia, and other injuries	1 year, 7 months

\*Terms of settlement are memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 8/16/13 – 11/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Flu	chronic inflammatory demyelinating polyneuropathy	1 year, 3 months
Flu	Guillain-Barré Syndrome	1 year, 2 months
Tetanus, Hep B	bi-lateral shoulder pain, neck pain, seizure activity, myalgia, myositis, radiculopathy, manifestations of nerve neuropathies	2 years, 10 months
Flu	Guillain-Barré Syndrome	2 years, 8 months
Tdap	intermittent left sided weakness, headaches, paresthesia, and fatigue	2 years
Flu	left arm pain and muscle wasting	1 year, 10 months
Flu	Guillain-Barré Syndrome	6 months
Flu	transverse myelitis	10 months

# Adjudicated Settlements\*

Reporting Period: 8/16/13 – 11/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
Hep B, IPV, DTaP, PCV, Hib	death	4 years, 5 months
Flu	Guillain-Barré Syndrome	8 months
Flu	chronic inflammatory demyelinating polyneuropathy	11 months
Tdap	brachial neuritis	11 months
DTaP, MMR	thrombocytopenic purpura	11 months
Flu	Guillain-Barré Syndrome	1 year, 1 month
Flu	transverse myelitis	1 year, 3 months
Flu	Guillain-Barré Syndrome	8 months

# Adjudicated Settlements\*

Reporting Period: 8/16/13 – 11/15/13

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
HPV	polymyositis	1 year, 5 months
Flu	Guillain-Barré Syndrome	1 year, 8 months
Flu	Guillain-Barré Syndrome	1 year
Tetanus	immunologic response resembling a transverse myelitis	11 months
Flu	Guillain-Barré Syndrome	3 years, 3 months
Hep B	focal lipodystrophy and paresthesias	1 year, 8 months

**Total Number of Judgments Adopting Settlement this reporting period: 70**

\*Terms of settlement are memorialized by Stipulation